

Draft Minutes of the  
Delta Protection Commission  
Thursday, August 25, 2005

**1. Call to Order/Roll Call**

Chairman McGowan called the meeting to order at 6:40 p.m.

Present: Chairman McGowan, Vice Chairman Ferguson, Commissioners Calone, Curtis, Kelly, Nottoli, Reagan, Scriven, Shaffer, Simonsen, van Loben Sels, and Wilson.

Absent: Commissioners Beckman, Cabaldon, Johnson, Piepho, Perez, Sanders, and Ornellas.

**2. Public Comments**

There were no public comments.

**3. Minutes of the Last Meeting**

Commissioner Calone moved approval of the minutes; Commissioner Shaffer seconded. The minutes were approved unanimously by voice vote.

**4. Introductions, Comments and/or Presentations**

Chairman McGowan presented a Resolution of Appreciation to Margit Aramburu, who served as the Executive Director of the Commission for 12 years, and retired from the State after 25 years. Chairman McGowan introduced Linda Fiack as the new Executive Director. He noted that Ms. Fiack previously served as the Deputy Director of the Yolo County Planning and Public Works, Parks and Natural Resources Department where she worked extensively with agricultural communities, habitat, recreation, flood and water issues.

Ms. Fiack stated that she was excited to be working with the Commission. She said that as Executive Director, she would be focusing on getting a broader regional voice for the Commission and furthering collaboration with other entities. She said she has planned group meetings and one-on-one meetings with Commissioners and various Delta stakeholders.

The next meeting of the Delta Protection Commission is scheduled for Thursday, September 22, 2005, 6:30 p.m., Jean Harvie Community Center.

**5. Informational Presentation on Delta Alliance**

Jeff Hart, Hartland Nurseries/Hart Restoration stated that his organization has been working on developing a Delta Alliance. The Alliance will serve as a grassroots, non-governmental, non-profit organization promoting a sustainable Delta.

The purpose of the Delta Alliance is to foster a grass root constituency for finding a common vision to the multi-faceted threats to the economy and environment of the Delta. The Goals of the Alliance are to promote compatible business, cultural-historical and environmental sustainability. Additionally, the Alliance would promote traditional and new forms of agriculture such as agri-tourism, signage, farm trails, traditional hunting, fishing and boating as well as ecotourism, to protect and preserve the cultural, historical and architectural communities,

buildings and landmarks. The Alliance would also promote environmental actions based on local input that would have regional benefits, local buy-in, as well as mold partnerships between private enterprise, other ngo's, and government.

Mr. Hart stated that the goal of the Alliance is to promote the objectives through tangible activities such as sponsoring a "Delta Days" educational event that would feature and promote its unique environment, culture and history, and its recreational, arts, music, food and farming businesses. This "event seminar" would allow private, public, local, regional, State and Federal Stakeholders to share their concerns, insights and solutions to the many challenges. Additionally, there would be educational programs on aquatic resources and waterfowl resources, flood control, water quality and levee stability. Through working together on such tangible educational activities, a development of mutual trust, understanding and insight would translate into a dialogue towards economic and environmental sustainability.

Mr. Hart said that the next steps include establishing a 501C3 nonprofit status, forming a board of directors, and raising funds through various possible sources of philanthropic organizations, which would go towards hiring an executive director.

Commissioner Wilson asked if the formation of the Alliance was a concept. Mr. Hart responded yes; however, he has received quite a bit of support through meetings with local Delta stakeholders.

Commissioner Shaffer asked Mr. Hart if he saw a formative effort to develop a RC&D council. Mr. Hart responded that he saw the RC&D's assisting in the efforts. However, because the situation in the Delta is dire, he felt that a parallel approach (with the RC&D's, the Commission and other organizations in addition to a top-down government approach) would foster something at a grass roots level. He said that the Alliance would also be good at fostering communication between the government and other entities. Commissioner Shaffer commented that the rationale for a RC&D council is a bottoms up, grass roots approach. He stated that NRCS might provide seed money to allow that grass roots effort to get off the ground.

#### **6. State Regional Water Quality Control Board Mercury Total Maximum Daily Load (TMDL) from Local Perspective**

Petrea Marchand, Water Resources Coordinator for Yolo County, gave an overview of the mercury issues in the Delta Total Maximum Daily Load (TMDL). Ms. Marchand said the Regional Board will release a staff report for the Delta mercury TMDL by late August or early September. She said that such a report was released for Cache Creek February of 2004 and the Regional Board will vote to adopt the Cache Creek mercury TMDL in October of this year. Yolo County was actively engaged in the process, and was able to interact in a positive manner with Regional Board staff. As a result, both Yolo County and the Regional Board have a better understanding of the issues and the proposed Cache Creek TMDL was improved in the process.

Ms. Marchand stated that the Delta TMDL includes the entire Yolo Bypass, as well as the Delta itself and Yolo County hopes to work with the Commission as a partner to develop a response to the Delta TMDL staff report and future TMDL proposals. She said the Regional Board's concern stems from studies showing that methylmercury, if concentrated at high enough levels in fish tissue, can present a risk to the health of fish-eating humans and fish-eating wildlife. The mercury occurs naturally in the sediment of many of California's watersheds. Additionally, most

of the high levels of mercury in Cache Creek and other California waterways are a direct result of mining activities. Today, abandoned mines continue to leach mercury, which washes into creeks and rivers and eventually ends up in the Delta. Mercury washing into the Delta is not toxic; however, given specific environmental conditions, mercury converts to methylmercury - which is toxic. Methylmercury then builds up in fish through the food chain. As such, Yolo County posted signs warning people to limit their consumption of fish caught in Cache Creek.

Ms. Marchand noted that the USEPA required states to implement TMDLs for mercury-impaired waterways. As a result, the Regional Board has focused on reducing the amount of mercury that enters waterways, thereby reducing the amount of mercury available for methylation. The USEPA has proposed a number of ways to reduce the amount of mercury entering the waterways, the most important of which are capping abandoned mines, erosion control and regulation of ponds, reservoirs, and wetlands. If these requirements are not carefully crafted, it can lead to unintended consequences on habitat restoration and farming activities.

Ms. Marchand stated that Yolo County worked with the Regional Board to carefully craft its requirements. She said state funding is needed for mercury monitoring and remediation activities and she strongly encouraged that the Commission work with the Regional Board, Assemblywoman Wolk, Assemblyman LaMalfa and Senator Machado as soon as the Delta TMDL staff report is released.

Commissioner Kelly asked if there was a draft TMDL report out for review for Yolo County and Cache Creek. Ms. Marchand responded that the Yolo County report was released in February 2004 and the regulations will be adopted in October 2005. She further stated that the Delta report, developed by the Central Valley Regional Water Quality Board should be released either at the end of August or the beginning of September.

Commissioner Shaffer asked if the San Francisco Bay Regional Board would be involved in the TMDL since the Delta region is multi-county. Ms. Marchand responded that it was her understanding the San Francisco Bay Regional Board would be leading the process; however, they would draw on what was done for Cache Creek. Commissioner Shaffer also asked if the parameters would change based on the potential for methylation for the TMDL developed for Cache Creek. Ms. Marchand responded yes, and that the Delta is in for a worse time because it has more environments where methylation can occur. She also said that she did not believe it was the responsibility of local governments to pay for the costs of cleaning mercury up because over 50 percent of legislators have a mercury impaired waterway in their district.

## **7. CALFED Update**

Ron Ott, CALFED staff, updated the Commission:

**BDPAC Subcommittees and other public meetings:** Several subcommittees of the Bay-Delta Public Advisory Committee and other meetings are slated for August through October.

**In-Delta Storage:** The In-Delta Section completed the technical work associated with the Supplemental Report to the State Feasibility Study on June 30, 2005. The report responds to comments and updates much of the work from the State Feasibility Study that was released in January 2004. In addition, the In Delta Storage project staff used data collected from the Jones Tract flood in June 2004 in revising various sections of this report. The FY 2006 State budget

cut out all In Delta Storage funding (\$2-Million). As a result, no staff work can continue on this project.

DWR is still committed to document and publicly disclose its latest findings (the work done since the State Feasibility Study was released) and complete the supplemental report, including conclusions, recommendations, and areas of technical uncertainty that still exist. An administrative draft report is currently under management review at DWR and should be moving up to the Executive Management in early September. DWR hopes to release the Supplemental Report to the public by October 2006.

**Interagency Group Looking at Delta Fish Populations:** The Interagency Ecological Program working group is examining factors that may be contributing to lower abundance of some Delta fish populations this year. The group is looking at a number of possible factors, including toxics, blue-green algae blooms, water diversions, and food chain disruptions. A work plan being developed for the effort is expected to call for expanded monitoring, data analyses and several new and ongoing studies to evaluate the effects of toxics and other factors such as Delta hydrodynamics and export activities at the Delta pumps.

**Revitalizing CALFED:** Consistent with the commitment in the Governor's Budget, a three point plan has been developed that will allow the CALFED Program to move forward and focus on addressing the highest priority issues associated with the conflicts of the Delta. The Plan, to be completed by December 2005, calls for an independent and fiscal review of the CALFED Program to ensure accountability, highlight accomplishments, determine program status, and guide adjustments to the program.

**Fiscal Review** – the California Department of Finance will examine accounting of Program appropriations, expenditures, and unappropriated balances by fiscal year and by Program element. The review will include state funding (general fund, bonds, and fees) as well as federal and local funding.

**Organization & Program Management** – an independent consultant will determine the status of the Program's implementation in terms of goals and objectives, performance measures and balance among individual Program Elements.

**Governance** – The Little Hoover Commission will examine the governance of the CALFED Bay-Delta Program and the California Bay-Delta Authority. A public process to refocus the efforts of the California Bay-Delta Authority and the other CALFED state agencies on solving conflicts associated with Delta water supply, water quality levee stability, and the environment; and a 10-year action plan for financing, to be developed in coordination with stakeholders and federal partners that will focus on solving the highest priority Delta issues.

## **8. Executive Director's Report:**

- 8a. Administrative: Linda Fiack announced that there have been several streamlining measures undertaken for the enhancement of staff services and funding; including review of the Executive Director's position to amend it and upgrade it to reflect the transition stage of the Commission. She announced that she worked with State Lands Commission to submit a survival Budget Change Proposal for \$30,000 to help supplement any increases associated with staffing, visioning, etc. The increase

would come from the Department of Boating and Waterways, Harbors and Watercraft Fund, but will not be available until fiscal year 2006-2007. Additionally, Ms. Fiack announced that the Commission will realize a slight salary savings with Lori Clamurro out on maternity leave.

- 8b. Legislation: Ms. Fiack announced that AB 797 (Wolk) was in the Senate Appropriations Committee where it remains on the suspense list. The bill is not considered “dead”; however, if it makes it off the suspense list, it will go on the Senate Floor where it will be introduced by Senator Machado. The bill has been amended to reflect the addition of three new members: one to represent the Bay-Delta Authority and two members to represent public interests—land owners and/or residents—with an expertise in wildlife and habitat conservation and recreation including hunting and fishing; and, an expertise in eco-system enhancement, including water quality and fish and wildlife habitat. Additionally, language in the bill regarding LAFCO’s has been removed and replaced with language that mentions who plays what role during land use changes when there is an amendment to a General Plan or Sphere of Influence. One of the new provisions is that the California Research Bureau conduct a study to recommend what the roles would be. Ms. Fiack said she has heard concerns that this recommendation would allow urban encroachment on the Primary Zone; however, the bill might tighten up the roles so clearly that it actually prevents encroachment. She said it would be to the benefit of the Commission to have the language added to the bill. The last amendment to the bill includes required fund expenditures of the Delta Protection Commission to be coordinated with the California Bay-Delta Authority, and conservation easements for projects outside of the Primary Zone. Ms. Fiack stated that since the Commission is going through a new visioning process, it will be holding a workshop in the near future where outcomes might make it feasible to hold off on the membership because the Commission might want to be more selective.

SB 153 (Chesbro/Murray) was last amended on July 11, 2005 and referred to Assembly Appropriations on the same date.

SB 200 (Machado) was last amended on April 19, 2005. The bill is presently being held in Senate Appropriations because of funding implications, and it is highly unlikely the bill will move from the suspense list.

AB 1665 (Laird) is now a two-year bill. If the bill were to move forward, then the Commission should make sure it is referenced in the bill.

AB 1200 (Laird) was last amended on June 23, 2005 and scheduled for hearing on August 15, 2005.

- 8c. Pending Projects/Correspondence Update: The new Pending Projects memo will only include a summary of those projects that were new or had updated information. The new format would also include any correspondence received/submitted by the Commission regarding a project.

The Clarksburg Sugarmill DEIR was released by Yolo County in 2004, and the Commission provided comments under CEQA. Yolo County is in the process of responding to all comments and releasing a revised draft EIR in September or October 2005. At that time, the commission will review the draft EIR to see if its comments have been addressed.

The California Department of Parks and Recreation is going through a visioning session to bring attention to the Central Valley. DPR director Ruth Coleman and other staff will be traveling to the various communities in the Central Valley to gather input as to what Central Valley needs are. The closest session will take place September 13, 2005; 4:00 p.m. – 6:00 p.m.; Moore's Riverboat Marina in Isleton.

8c(1) The draft letter for the Long Term Management Strategy (LTMS) is to support streamlining of the permit process for dredging and emphasize the component of reuse of dredging spoils. This process will explore that and has related benefits to navigation water quality and habitat enhancement. The process will caution the regional board not to set parameters against the reuse of materials based on specific areas, but realize there may be exceptions. Funding was initially provided for the project and Contra Costa County is serving as the lead to send letters for continuance of the funding.

It was moved by Commissioner Wilson and seconded by Commissioner Ferguson to execute a letter in support of funding the Long Term Management Strategy for dredging/reuse permit process/program development. The motion was approved unanimously by voice vote.

8c(2) The BDPAC Levee Subcommittee sent a letter to DWR requesting clarification of funding and projects priorities for the Bay-Delta Program. To date, BDPAC has not received a response and Ms. Fiack asked that the Commission support sending a second letter.

Commissioner Shaffer asked that Ron Ott check with CALFED and report back to the Commission. Mr. Ott responded that CALFED has the letter; however he will check on the status.

It was moved by Commissioner Simonsen and seconded by Commissioner Wilson to support the BDPAC Levee's Subcommittees letter to DWR requesting clarification of funding and project priorities for the CALFED Bay-Delta Program. The motion was approved unanimously by voice vote.

Commissioner van Loben Sels asked how best the Commission could weigh in to help mold and/or direct the priorities for spending the \$90 million. Mr. Ott responded that the joint process between DWR and the Corps. has already identified what amounts to be allocated toward studies and the amounts to be allocated toward sites.

8c(3) The California Coastal Commission is sponsoring a Coastal Cleanup Day on Saturday, September 17, 2005. The cleanup will take place at various sites in and around the Delta. The Commission will serve as the site sponsor for the cleanup at the Clarksburg Public Fishing Access Site, which will allow the Commission's name to be placed on all marketing materials.

It was moved by Commissioner Wilson and seconded by Commissioner Nottoli to serve as a site sponsor for the 21<sup>st</sup> Annual Coast & Creek Cleanup Day. The motion was approved unanimously by voice vote.

8c(4) Ms. Fiack announced that with the success of the Delta Levees workshop at the University of the Pacific in June, there has been talk to have a science-based workshop to be facilitated by the Bay Delta Science Consortium. She asked that the Commission support the concept.

8c(5) The California Reclamation Board will hold its next meeting on Friday, September 16, 2005, 9:00 a.m., at the Fresno Metropolitan Flood Control District, 5469 E. Olive Avenue, Fresno. Discussions will include urban development adjacent to levees, and guidelines for the floodway forum. Additionally, a letter from Reclamation Board staff to Yolo County staff regarding the Reclamation Board's position on the Clarksburg Sugarmill Project will also be discussed.

**8c(6) Attorney General's Report**

Dan Siegel reported that he had been receiving telephone calls and correspondence from various attorney's concerning the Clarksburg Sugarmill Project. He said that some of the attorney's are stating that the Commission's Management Plan will not apply to the project, whereas other attorney's are arguing the opposite. Mr. Siegel stated that he reviewed the materials but has not done an analysis or given out a formal opinion on the information. Commissioner van Loben Sels asked Mr. Siegel why he could not give the Commission an opinion. Mr. Siegel responded that he has not fully analyzed the issue; however, he felt that the project is in the Primary Zone as stated in the Commission's comment letter on the DEIR, and has not seen any materials that would alter his opinion at this point.

**9. Workshop to Discuss Commission Direction**

Ms. Fiack reported that the Commission is moving forward into a new era, and as such, she was working on putting together a visioning workshop. She said her focus is on a one, three, and five-year vision. The workshop will focus on developing a mission, as well as a vision for where the Commission wants to go and where it wants the Delta to go. Components of the workshop will include approaches, compatibility, and partnerships with other entities; and, funding. She stated that she has spoken with the Non-Profit Resource Center to help facilitate the workshop and interview Commissioners. Commissioner van Loben Sels asked if the facilitator would want to keep the historical information that was gathered previously or would the person want to start from scratch. Ms. Fiack responded that the facilitator will look at new materials, plus he will take into consideration all background information on the Commission.

Ms. Fiack commented that the Commission should take advantage of any grants, public relations and implement any actions mentioned in the Management Plan. She asked that the Commission dedicate a staff member to help put together a team to help with the kick-off.

McGowan stated that he felt it will be an easy operation. He said that as a result of past experiences, it has become obvious that the Commission should develop a sharper focus. He also said that the Commission should look at local agencies for funding resources to make the new vision/mission a reality.

Commissioner Nottoli noted that he would look at the County to identify support personnel to help with the project. Commissioner Kelly said she would do the same. Commissioner Simonsen stated that he could not make a commitment personally, as he would have to ask the permission of ABAG.

Commissioner Wilson asked if there would be any legal ramifications to this. Mr. Siegel responded no.

#### **10. Commissioner Comments/Announcements**

Commissioner Shaffer reported that a recent article in *Scientific American* referenced ideas on natural resources management. He also reported that due to the revamping of the CALFED program and funding constraints, the Working Landscapes Subcommittee may not survive. He said that Resources Secretary Mike Chrisman and Department of Food and Agriculture (CDFA) Secretary A.J. Kawamura are committed to looking at ways to broaden the Subcommittee statewide, and DFA staff are putting together a strategy of alternatives to make this a reality.

Commissioner Shaffer also reported that the NRCS has hired Ed Burton as the new state conservationist, and asked that the Commission invite him to a meeting to look at various partnerships and funding opportunities.

Commissioner Kelly announced that DWR will be releasing the DEIR/DEIS for the South Delta Improvements Program in late September. She said the Commission should have a briefing, sooner rather than later, on the stage decision DWR is proposing for the project.

#### **11. Adjourn**

The meeting was adjourned at 8:55 p.m., in the memory of David James Elliot, III and John Martin Lewallen, prominent Delta farming community members.